

REMARKS/ARGUMENTS

The claims have been divided into Groups as follows:

- Group I: Claim(s) 1-2, drawn to an endurance or antifatigue agent comprising catechins as an active ingredient.
- Group II: Claim(s) 3-4, drawn to a method for the production of an endurance or antifatigue agent.
- Group III: Claim(s) 5-6, drawn to a method for improving endurance or ameliorating fatigue, which comprises administering an effective dose of catechins.
- Group IV: Claim(s) 7, drawn to an AMPK activator comprising catechins as the active ingredient.
- Group V: Claim(s) 8, drawn to a method of producing of an AMPK activator.
- Group VI: Claim(s) 9, drawn to a method of activating AMPK, which comprises administering an effective dose of catechins.

Applicants elect, with traverse, Group III, Claims 5-6, drawn to a method for improving endurance or ameliorating fatigue, which comprises administering an effective dose of catechins, for examination.

Applicants respectfully traverse the Restriction Requirement on the grounds that no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctness between the identified groups.

Restriction is only proper if the claims of the restricted groups are independent or patentably distinct and there would be a serious burden placed on the Examiner if restriction is not required (MPEP §803). The burden is on the Examiner to provide reasons and/or examples to support any conclusion in regard to patentable distinction (MPEP §803). Moreover, when citing lack of unity of invention in a national stage application, the Examiner has the burden of explaining why each group lacks unity with each other group specifically describing special technical features in each group (MPEP § 1893.03(d)).

The Office has asserted that Groups I - VI do not relate to a single general inventive concept under PCT Rule 13.1 because under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

“the common technical feature in all groups is: catechins. This element cannot be a special technical feature under PCT rule 13.2 because the element is known in the prior art. For example: Soeda (JP 2003-02410, Patent Abstract, cited by applicant) describes the use of catechin (main ingredient of green tea) as a food-enhancer.”

Annex B of the Administrative Instructions under the PCT at (b) Technical Relationship states:

“The expression “special technical features” is defined in Rule 13.2 as meaning those technical features that defines a contribution which each of the inventions, considered as a whole, makes over the prior art. The determination is made on the contents of the claims as interpreted in light of the description and drawings (if any).”

Applicants respectfully submit that the Examiner has not provided any indication that the contents of the claims interpreted in light of the description was considered in making the assertion of a lack of unity and therefore has not met the burden necessary to support the assertion.

Furthermore, 37 C.F.R. § 1.475(b) states in pertinent part:

“An international or a national stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:

(2) A product and a process of use of said product; . . .”

Applicants respectfully submit that the Office has not considered the relationship of the inventions of Groups I-VI with respect to 37 C.F.R. § 1.475(b)(2). Therefore the burden necessary according to MPEP § 1893.03(d) to sustain the conclusion that the groups lack of unity of invention has not been met.

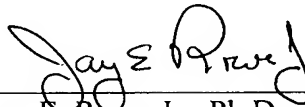
Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the requirement for restriction.

Applicants therefore request that the requirement for restriction be withdrawn.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully Submitted,

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